UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
FAX (605) 224-9020

August 26, 2004

LuAnn K. Pfeifle
300 North Indiana Ave.
Sioux Falls, South Dakota 57103

Harry A. Engberg, Esq.
505 N. Minnesota Avenue
Sioux Falls, South Dakota 57104

Subject: ***Pfeifle v. Williams***
(In re Bud Haley Williams and Kathy Claire Williams)
Adversary No. 04-4031
Chapter 7; Bankr. No. 03-41580

Dear Ms. Pfeifle and Mr. Engberg:

The matter before the Court is Ms. Pfeifle's application for default judgment. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes that Ms. Pfeifle is not entitled to the relief she has requested.

Summary. On August 7, 2003, Bud H. Williams ("Debtor") ran a stop light at 8th Street and Cliff Avenue in Sioux Falls, South Dakota and struck Ms. Pfeifle's vehicle. On December 29, 2003, Debtor filed a petition for relief under chapter 7 of the bankruptcy code. He listed Ms. Pfeifle's claim for $20,000 as "disputed" on his Schedule F. On May 28, 2004, Ms. Pfeifle filed a complaint under 11 U.S.C. § 523(a)(6) to determine the dischargeability of her claim against Debtor.[1] Debtor failed to

[1] The original deadline for filing a complaint to determine the dischargeability of a particular debt was March 30, 2004. However, that deadline was extended to June 1, 2004 by the Court's April 13, 2004 Order Extending the Time for Filing a

answer or otherwise respond to Ms. Pfeifle's complaint, and on June 29, 2004, the Clerk entered an Entry of Default against Debtor. On July 27, 2004, Ms. Pfeifle filed an application for default judgment.

Discussion. While Debtor has not answered or otherwise responded to Ms. Pfeifle's complaint, that alone does not warrant granting Ms. Pfeifle the relief she has requested.[2] The Court has an independent duty to determine the sufficiency of the underlying claim. *See Ryan v. Homecomings Financial Network*, 253 F.3d 778, 780-83 (4th Cir. 2001); *Miller v. Kasden* (*In re Kasden*), 209 B.R. 236 (B.A.P. 8th Cir. 1997).

Under 11 U.S.C. § 523(a)(6), a chapter 7 debtor is not entitled to a discharge of any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity . . ." The question of what constitutes a "willful and malicious injury" has been answered by the Supreme Court:

> The word "willful" in [§ 523](a)(6) modifies the word "injury," indicating that nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury. Had Congress meant to exempt debts resulting from unintentionally inflicted injuries, it might have described instead "willful acts that cause injury." Or, Congress might have selected an additional word or words, *i.e.*, "reckless" or "negligent," to modify "injury." Moreover, as the Eighth Circuit observed, the [§ 523](a)(6) formulation triggers in the lawyer's mind the category "intentional torts," as distinguished from negligent or reckless torts. Intentional torts generally require that the actor intend "the *consequences* of an act," not simply "the act itself." Restatement (Second) of Torts § 8A, comment *a*, p. 15 (1964) (emphasis added).

Complaint Objecting to Discharge or to Determine Dischargeability of Certain Types of Debts.

[2] If Debtor intended to consent to a determination of nondischargeability, that should have been done pursuant to stipulation.

Kawaauhau v. Geiger, 523 U.S. 57, 61 (1998).

Even before *Geiger*, the majority rule was that the failure to maintain insurance does not constitute a willful and malicious injury.

> The majority of courts have determined that the mere failure to carry insurance is not a willful and malicious act on the theory that when the insurance terminated, there was no intent to harm the injured party and that the failure to maintain insurance is not the act which causes harm to the injured party; that some further event, such as an accident causes the harm.

Choi v. Brown (*In re Brown*), 201 B.R. 411, 414 (Bankr. W.D. Pa. 1996) (citations omitted). That is still the majority rule.

> Applying the rule in this case, it is clear that [Plaintiff's] physical injury was not substantially certain to result from [Debtor's] failure to obtain insurance. While [Debtor's] failure to act did result in [Plaintiff's] lack of coverage after his slip and fall, it cannot be said that [Debtor] intended for [Plaintiff] to suffer a fall or that there was an unbroken chain of events leading from [Debtor's] act to [Plaintiff's] physical injury. Operating without insurance is a clear example of recklessness. However, it was not substantially certain that [Plaintiff] would suffer a physical or economic injury as a result of [Debtor's] failure to insure the taxicab. . . . This conclusion is consistent with the position of the majority of courts that have addressed the issue of whether the failure to maintain insurance is willful and malicious under section 523(a)(6).

Jafarpour v. Shahrokhi, (*In re Shahrokhi*), 266 B.R. 702, 708-9 (8th Cir. BAP 2001). It is also the rule in South Dakota. In a case involving facts similar to those pled by Ms. Pfeifle, this Court held that:

> While [Debtor] has admitted fault in causing the accident, there is simply no evidence that he intentionally caused the accident or intentionally

> damaged [Plaintiff's] car. Thus, under the facts as pled, [Plaintiff's] judgment did not arise from a willful injury to property[,] and her claim is not protected from discharge by § 523(a)(6).

American Family Insurance v. Williamson (*In re Williamson*), Adv. No. 01-1019, slip op. at 3 (Bankr. D.S.D. Feb. 15, 2002).

In this case, Ms. Pfeifle alleges that Debtor "intentionally operated a motor vehicle without insurance and accidently ran a red light causing a collision with Plaintiff . . . ." Thus, Debtor's only intentional act was to operate a motor vehicle without insurance. Ms. Pfeifle has pled no facts that would permit the Court to conclude that in doing so, Debtor intended to cause her harm.

Moreover, Debtor's operating a motor vehicle without insurance was not in fact what caused Ms. Pfeifle's injuries. Debtor's accidently running the red light caused Ms. Pfeifle's injuries. Again, Ms. Pfeifle has pled no facts that would permit the Court to conclude that in doing so, Debtor intended to cause her harm.

Under *Geiger*, Ms. Pfeifle cannot prevail. The Court will therefore enter an order dismissing this adversary proceeding.

Sincerely,

/s/ Irvin N. Hoyt

Irvin N. Hoyt
Bankruptcy Judge

INH:sh

cc: adversary file (docket original in adversary; serve copies on counsel)